	Case3:09-cv-01316-MHP Document18 F	Filed06/03/09	Page1 of 14
1	DUCCELL D MODCAN (1 1/4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		
2	RUSSELL B. MORGAN (admitted pro hac vice) SCOTT K. HAYNES (admitted pro hac vice)		
3	BRADLEY ARANT BOULT CUMMINGS LLP 1600 Division Street, Suite 700		
4	Nashville, TN 37209 Tel: (615) 252.2311		
5	Fax: (615 252.6311		
6	rmorgan@babc.com shaynes@babc.com		
7	DAVID F. GROSS (Bar No. 083547)		
8	STEPHEN A. CHIARI (CA Bar No. 221410) DLA Piper LLP (US)		
9	555 Mission Street, Suite 2400		
10	San Francisco, CA 94105 Tel. (415) 836.2500		
11	Fax: (415) 836.2501 david.gross@dlapiper.com		
12	stephen.chiari@dlapiper.com		
13	Attorneys for Defendant, Motricity, Inc.		
14	UNITED STATES DI	STRICT COU	RT
15	FOR THE NORTHERN DIST AT SAN FRA		LIFORNIA
16	AI SAN FRA	INCISCO	
17 18	CAMELLIA WALKER, individually and on behalf of a class of similarly situated individuals,		
19	Plaintiff,	Case No. 09	9-CV-01316 MHP
20	VS.		TY, INC.'S ANSWER TO CTION COMPLAINT
21	MOTRICITY, INC., a Delaware corporation,		
22	Defendant.		
23			
24	The Defendant, Motricity, Inc. ("De	efendant" or "M	Intricity"), for its answer to the
25	Class Action Complaint ("Complaint") filed agains	t it, states:	
26			
27			
28			

1	PARTIES
2	1. Defendant lacks information sufficient to form a belief as to the truth of the
3	allegations of Paragraph 1 of the Complaint, and therefore, the allegations are denied.
4	2. Defendant admits that it is an "aggregator" but denies the remaining
5	allegations of the first sentence of Paragraph 2 of the Complaint. Defendant admits the
6	allegations contained in the last sentence of Paragraph 2 of the Complaint.
7	JURISDICTION
9	3. Defendant admits that jurisdiction is proper in this Court.
10	4. Defendant denies the allegations contained in Paragraph 4 of the
11	
12	Complaint.
13	VENUE
14	5. Defendant is without knowledge or information sufficient to admit or deny
15	the allegations contained in Paragraph 5 of the Complaint.
16	CONDUCT COMPLAINED OF
17	6. The allegations contained in Paragraph 6 of the Complaint do not require a
18	response.
19	7. Defendant admits that it is an "aggregator." Defendant denies the
20	remaining allegations contained in Paragraph 7 of the Complaint.
21	8. Defendant denies the allegations contained in Paragraph 8 of the
22	Complaint.
23	9. Defendant denies the allegations contained in Paragraph 9 of the
24	
25	Complaint.
26	10. Defendant denies the allegations contained in Paragraph 10 of the
2728	MOTRICITY INC.'S ANSWER TO CLASS 2 Case No. 09-CV-01316 MHP ACTION COMPLAINT

1	Complaint.											
2		11.	Defendant	denies	the	allegations	contained	in	Paragraph	11	of	the
3	Complaint.											
4	-	12.	Defendant	denies	the	allegations	contained	in	Paragraph	12	of	the
5	Complaint.					C			<i>C</i> 1			
6	Compraint.	13.	Defendant	denies	the	allegations	contained	in	Paragraph	13	of	the
7	Complaint.	13.	Derendant	dellies	tile	anegations	contained	111	i aragrapii	13	OI	tiic
9	Complaint.	1.4	Defendent	4	41	-11	4	•	D1-	1 /	- C	41
10		14.	Defendant	denies	tne	allegations	contained	111	Paragrapn	14	01	tne
11	Complaint.		-								2	
12		15.	Defendant	denies	the	allegations	contained	in	Paragraph	15	of	the
13	Complaint.											
14		16.	Defendant	admits t	hat i	t facilitates o	lelivery of	mot	oile content.	De	efen	dant
15	denies the ren	naining	allegations c	ontaine	d in F	Paragraph 16	of the Com	plai	int.			
16		17.	Defendant	denies	the	allegations	contained	in	Paragraph	17	of	the
17	Complaint.											
18		18.	Defendant	denies	the	allegations	contained	in	Paragraph	18	of	the
19 20	Complaint.											
20		19.	Defendant	denies	the	allegations	contained	in	Paragraph	19	of	the
22	Complaint.											
23		20.	Defendant	denies	the	allegations	contained	in	Paragraph	20	of	the
24	Complaint.											
25		21.	Defendant	denies	the	allegations	contained	in	Paragraph	21	of	the
26	Complaint.											
27												
28	MOTRICITY I			CLASS		3		Ca	se No. 09-CV-	0131	6 M	HP

1		22.	Defendant	lacks inf	forma	ation sufficie	nt to form a	ı be	lief as to the	trut	h of	the
2	allegations co	ntained	in Paragrapl	n 22 of t	he Co	omplaint, and	d therefore,	the	allegations	are c	leni	ed.
3		23.	Defendant	denies	the	allegations	contained	in	Paragraph	23	of	the
4	Complaint.											
5		24.	Defendant	denies	the	allegations	contained	in	Paragraph	24	of	the
6 7	Complaint.					C			0 1			
8	F	25.	Defendant	denies	the	allegations	contained	in	Paragraph	25	of	the
9	Compleint	23.	Derendant	dellies	tiic	anegations	Contained	111	i aragrapii	23	OI	tiic
10	Complaint.	26	D 6 1						D 1	26	C	
11		26.	Defendant	denies	the	allegations	contained	ın	Paragraph	26	of	the
12	Complaint.											
13		THE 1	FACTS REI	LATIN(G TO	NAMED P	LAINTIFI	W	ALKER			
14		27.	Defendant	lacks inf	forma	ation sufficie	nt to form a	be.	lief as to the	trut	h of	the
15	allegations of	Paragra	aph 27 of the	Compla	aint, a	and therefore	e, the allega	tion	s are denied	•		
16		28.	Defendant	lacks inf	forma	ation sufficie	nt to form a	ı be	lief as to the	trut	h of	the
17	allegations of	Paragra	aph 28 of the	Compla	aint, a	and therefore	e, the allega	tion	s are denied			
18		29.	Defendant	denies	the	allegations	contained	in	Paragraph	29	of	the
19	Complaint.											
20		30.	Defendant	denies	the	allegations	contained	in	Paragraph	30	of	the
21	Complaint.					C			C 1			
22	Complaint.	31.	Defendant	donice	tho	allogations	contained	in	Dorograph	21	of	tho
23		31.	Defendant	dellies	uie	allegations	contained	111	Faragraph	31	OI	uie
24	Complaint.											
25		32.	Defendant	denies	the	allegations	contained	in	Paragraph	32	of	the
26	Complaint.											
27 28												
40	MOTRICITY I			CLASS		4		Ca	se No. 09-CV-	-0131	6 M	HP

1		33.	Defendant	denies	the	allegations	contained	in	Paragraph	33	of	the
2	Complaint.											
3				CLAS	SS Al	LLEGATIO	ONS					
4		34.	Defendant	denies	the	allegations	contained	in	Paragraph	34	of	the
5	Complaint bed	cause P	laintiff autho	orized th	e cha	rges in quest	tion.					
6	•	35.				allegations		in	Paragraph	35	of	the
7	Complaint bed					_		•••	i urugrupii		01	
8	Complaint occ								Danaananh	26	o.f	4ha
10		36.				allegations .		111	Paragraph	30	OI	me
11	Complaint bed										_	
12		37.	Defendant	denies	the	allegations	contained	in	Paragraph	37	of	the
13	Complaint bed	cause P	laintiff autho	orized th	e cha	rges in quest	tion.					
14		38.	Defendant	denies	the	allegations	contained	in	Paragraph	38	of	the
15	Complaint bed	cause P	laintiff autho	orized th	e cha	rges in quest	tion.					
16		39.	Defendant	denies	the	allegations	contained	in	Paragraph	39	of	the
17	Complaint.											
18		40.	Defendant	denies	the	allegations	contained	in	Paragraph	40	of	the
19	Complaint.											
20		41.	Defendant	denies	the	allegations	contained	in	Paragraph	41	of	the
21 22	Complaint.											
23			-	FIRST	CAU	SE OF ACT	ΓΙΟΝ					
24		(]	Restitution/	Unjust 1	Enric	chment on b	ehalf of the	e Cl	ass)			
25		42.	Paragraph 4	42 of the	e Coi	mplaint does	not require	e a ı	response. T	o the	e ex	tent
26	that it does red	quire a	response, it i	s denied	l .							
27		43.	Defendant	denies	the	allegations	contained	in	Paragraph	43	of	the
28	MOTRICITY I ACTION COM			CLASS		5		Ca	se No. 09-CV-	-0131	6 Ml	HP

	Case3:09	-cv-013	316-MHP	Docume	ent18	3 Filed06/	03/09 Pa	ge6	6 of 14			
1	Complaint.											
2		44.	Defendant	denies	the	allegations	contained	in	Paragraph	44	of	the
3	Complaint.											
4	r · · ·	45.	Defendant	denies	the	allegations	contained	in	Daragraph	15	of	the
5		45.	Deteridant	demes	шс	anegations	contained	111	i aragrapii	73	OI	tiic
6	Complaint.											
7		46.	Defendant	denies	the	allegations	contained	in	Paragraph	46	of	the
8	Complaint.											
9		(Tor				USE OF AC		'tha	(Class)			
10		·								'a +1		tont
11		47.	0 1			mplaint does	not require	еаг	response. 1	o in	e ex	ieni
12	that it does re	quire a	response, it i	s denied	•							
13		48.	Defendant	denies	the	allegations	contained	in	Paragraph	48	of	the
14	Complaint.											
15		49.	Defendant	denies	the	allegations	contained	in	Paragraph	49	of	the
16	Complaint.											
17		50.	Defendant	denies	the	allegations	contained	in	Paragraph	50	of	the
18	Complaint.					_						
19		51.	Defendant	danias	tha	allegations	contained	in	Daragraph	51	of	tha
20 21		31.	Defendant	demes	uic	anegations	Contained	111	i aragrapii	31	OI	une
22	Complaint.											
23	(V	'iolatio				JSE OF AC' umer Legal		Act	("CLRA")	•		
24	,					0 on behalf			,	,		
25		52.	Paragraph :	52 of the	e Co	mplaint does	not require	e a r	response. T	o th	e ex	tent
26	that it does re	quire a	response, it i	s denied								
27		53.	Defendant	denies	the	allegations	contained	in	Paragraph	53	of	the
28	MOTRICITY I ACTION COM			CLASS		6		Ca	se No. 09-CV-	-0131	6 M	HP

	Case3:09	9-cv-01	316-MHP	Docume	ent18	8 Filed06/	03/09 Pa	ge7	of 14			
1	Complaint.											
2		54.	Defendant	denies	the	allegations	contained	in	Paragraph	54	of	the
3	Complaint.					C						
4	Complaint.	E E	Defendant	dan!aa	4 1 5 a	alla aati ama	المسادة المسادة		Dana ananh	<i>5 5</i>	~ C	41
5		55.	Defendant	demes	tne	allegations	contained	m	Paragrapn	33	OI	tne
6	Complaint.											
7		56.	Defendant	denies	the	allegations	contained	in	Paragraph	56	of	the
8	Complaint.											
9		(V):				USE OF AC		/66 T				
10		•	olation of Ca Cal. Bus. & I			_		•	, ,			
11		57.	Paragraph :	57 of the	e Co	mplaint does	not require	e a 1	response. T	o th	e ex	tent
12	that it does re	equire a	response, it i	s denied	l .							
13		58.	Defendant	denies	the	allegations	contained	in	Paragraph	58	of	the
14	Complaint.											
15	Complaint.	59.	Defendant	donica	tho	allogations	contained	in	Dorograph	50	of	tho
16		39.	Defendant	dellies	uic	allegations	Contained	111	Faragraph	39	OI	tile
17 18	Complaint.											
19		60.	Defendant	denies	the	allegations	contained	in	Paragraph	60	of	the
20	Complaint.											
21		61.	Defendant	denies	the	allegations	contained	in	Paragraph	61	of	the
22	Complaint.											
23						SE OF ACT						
24						ia's Comput 2 on behalf			,			
25		62.	Paragraph (62 of the	e Coi	mplaint does	not require	e a 1	response. T	o th	e ex	tent
26	that it does re	equire a	0 1			-	1		-			
27		u	- 35p 3110 0 , 10 1	_ comed	•							
28	MOTRICITY:			CLASS		7		Ca	se No. 09-CV	-0131	6 M	HP

	Case3:09)-cv-01	316-MHP	Docume	ent18	3 Filed06/	03/09 Pa	ge8	3 of 14			
1		63.	Defendant	denies	the	allegations	contained	in	Paragraph	63	of	the
2	Complaint.											
3		64.	Defendant	denies	the	allegations	contained	in	Paragraph	64	of	the
4	Complaint.											
5		65.	Defendant	denies	the	allegations	contained	in	Paragraph	65	of	the
6	Complaint.					C						
7	Compraint.	66.	Defendent	donica	tha	allogations	aantainad	in	Dorograph	66	of	tha
8 9		00.	Defendant	dellies	uie	allegations	contained	111	raragrapii	00	OI	uie
10	Complaint.											
11		67.	Defendant	denies	the	allegations	contained	in	Paragraph	67	of	the
12	Complaint.											
13						SE OF ACT on behalf of						
14		68.				mplaint does		e a r	esponse T	'o th	e ex	tent
15	that it does re		0 1			inprami does	not require		esponse. 1		0 011	
16	that it does re	-	-			-114:		•	D	60	- C	41
17		69.	Derendant	denies	tne	allegations	contained	ın	Paragrapn	69	OI	tne
18	Complaint.											
19		70.	Defendant	denies	the	allegations	contained	in	Paragraph	70	of	the
20	Complaint.											
21		71.	Defendant	denies	the	allegations	contained	in	Paragraph	71	of	the
22	Complaint.											
23						USE OF A						
24			(Trespa	iss to Cl	natte!	ls on behalf	of the Clas	s)				
25												
26		72.	Paragraph '	72 of the	e Co	mplaint does	not require	e a ı	response. T	o the	e ex	tent
2728	Momprovers	MIC 1C :	NOWED TO	OT AGG		0		~	N 00 57-	015:		
20	MOTRICITY I ACTION COM			LASS		8		Ca	se No. 09-CV	-0131	6 M	HP

1	that it does re	equire a	response, it i	s denied	l .							
2		73.	Defendant	denies	the	allegations	contained	in	Paragraph	73	of	the
3	Complaint.											
4	1	74.	Defendant	denies	the	allegations	contained	in	Paragraph	74	of	the
5	Complaint.	,					• on white		1 mrm8rmpm	, .	01	0220
6	Complaint.	75	D-f11	4	41	-114:	4	•	D1-	75	- C	41
7		75.	Defendant	denies	tne	allegations	contained	ın	Paragrapn	15	OI	tne
8	Complaint.											
9		76.	Defendant	denies a	ll alle	egations not	expressly ac	lmi	tted or denie	ed he	rein	۱.
10		77.	Defendant	denies t	hat tl	ne Plaintiff o	or the putati	ve	class are en	titled	d to	any
11	of the relief s	pecified	d in the Plaint	iff's Pra	ıyer f	or Relief.						
12 13												
13			4	AFFIRI	<u>MAT</u>	IVE DEFE	<u>NSES</u>					
15				FI	RST	DEFENSE						
16	The I	Plaintiff	s Complaint	fails to	o sta	te a claim u	ipon which	rel	ief can be	gran	ted	and
17	therefore sho	uld be o	dismissed.									
18				SEC	CON	D DEFENS	E					
19	The P	laintiff	's claims, incl	luding th	ne cla	ims made or	n behalf of t	he p	outative clas	s, ar	e	
20	barred by the	doctrin	nes of laches,	waiver a	and e	stoppel.						
21	·		·			DEFENSE						
22	The I	Dlaintiff	e alaima in					· of	the putetix	vo. ol	occ	oro
23			s claims, in						-			
24	barred or lin	•	_	eriod(s)	of tl	ne applicable	e statute of	lin	nitations an	d re	pose	e, 11
25	proven applic	cable by	discovery.									
26												
27												
28	MOTRICITY ACTION COM			CLASS		9		Ca	se No. 09-CV-	-0131	6 M	HP

MOTRICITY INC.'S ANSWER TO CLASS ACTION COMPLAINT

FOURTH DEFENSE

The Northern District of California is an inappropriate and inconvenient venue, and the Court should transfer this cause to the U.S. District Court for the Western District of Washington or other appropriate venue under the doctrine of *forum non conveniens*.

FIFTH DEFENSE

The Complaint is not appropriate for class relief because the lone Plaintiff does not fairly and adequately represent the interests of the other members of the putative class and, therefore, the Court should not certify any such class under Federal Rule of Civil Procedure 23.

SIXTH DEFENSE

The Complaint is not appropriate for class relief because the Plaintiff's claims are not typical of the claims of all the other members of the putative class. The Plaintiff cannot show that Motricity and/or wireless carriers made the same alleged promises to the other members of the putative class that were made to her when she activated her wireless account or that the other members of the putative class similarly relied on such promises. The Plaintiff also cannot show that the method for authorization of alleged charges that are the basis of this action were the same or substantially similar for all class members or that the other class members did not, in fact, authorize the alleged charges. Consequently, the Court should not certify any such class under Federal Rule of Civil Procedure 23.

SEVENTH DEFENSE

The Complaint is not appropriate for class relief because the claims asserted therein do not involve questions of fact or law common to the class. In particular, the Complaint seeks relief for alleged unauthorized charges to Plaintiff's account and the determinative question for each charge

on the putative class members' accounts is whether each individual customer authorized each individual charge. These are not appropriate class claims.

EIGHTH DEFENSE

The Plaintiff's claims under the California Computer Crime Law, Cal. Pen. Code § 502 are barred because such claims are not covered under the provisions of that Act.

NINTH DEFENSE

The Plaintiff's claim under the California Consumer Legal Remedies Act, Cal. Civil Code § 1770 is barred because the Plaintiff failed to comply with § 1782 of that Act.

TENTH DEFENSE

The Plaintiff's claim for exemplary damages cannot be sustained because an award of exemplary damages under California law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of exemplary damages that could be imposed would violate Motricity's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and under the due process of law provisions of the California Constitution.

ELEVENTH DEFENSE

The Plaintiff's claim for exemplary damages under the California Computer Crimes Law, Cal. Pen. Code § 502, is barred because Motricity did not engage in any improper activity, much less the fraud that is required to establish a claim for such damages.

TWELFTH DEFENSE

The Plaintiff's request for class certification should be denied because class relief under Rule 23 of the Federal Rules of Civil Procedure is not the best method for adjudicating the claims of the alleged class members.

MOTRICITY INC.'S ANSWER TO CLASS ACTION COMPLAINT

THIRTEENTH DEFENSE

The Plaintiff's claims should be dismissed because she does not have a contract or any other agreement with Motricity.

FOURTEENTH DEFENSE

The Plaintiff's claims should be dismissed because she authorized all alleged charges incurred with or paid to Motricity, if any.

FIFTEENTH DEFENSE

The Plaintiff's request for injunctive relief should be denied because she cannot demonstrate a substantial likelihood of success on the merits or any immediate or irreparable injury.

SIXTEENTH DEFENSE

The Plaintiff and/or her agents failed and neglected to use reasonable care to mitigate, minimize, or avoid the alleged damages, and Motricity is therefore entitled to any sum to which the Plaintiff would otherwise be entitled, reduced by such sums as could have been mitigated, minimized, or avoided.

SEVENTEENTH DEFENSE

The Plaintiff and/or her agents failed and neglected to use reasonable care to mitigate, minimize, or avoid the alleged damages, and Motricity is therefore entitled to any sum to which the Plaintiff would otherwise be entitled, reduced by such sums as could have been mitigated, minimized, or avoided.

EIGHTEENTH DEFENSE

Motricity reserves the right to add further and additional affirmative defenses as its discovery and investigation in this action proceed.

MOTRICITY INC.'S ANSWER TO CLASS ACTION COMPLAINT

	Case3:09-cv-01316-MHP Document18 Filed06/03/09 Page13 of 14
1	WHEREFORE, Defendant Motricity, Inc. respectfully requests that the Court:
2	A. Dismiss the Complaint with Prejudice;
3	B. Grant a jury trial on all issues so triable;
4	
5	 C. Award Motricity, Inc. its attorneys' fees and costs incurred in defending this action; and
6	D. Grant Motricity any and all other relief to which it appears entitled.
7	Respectfully submitted,
8	BRADLEY ARANT BOULT CUMMINGS LLP
9	
10	s/Russell B. Morgan
11	Russell B. Morgan
12	Attorney for Defendant Motricity, Inc.
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	MOTRICITY INC.'S ANSWER TO CLASS 13 Case No. 09-CV-01316 MHP

PROOF OF SERVICE The undersigned certifies that on June 3, 2009, he caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to counsel of record for each party, as listed below: Alan Himmelfarb Michael J. Aschenbrener Stephen A. Chiari David F. Gross Russell B. Morgan Scott K. Haynes s/Russell B. Morgan Russell B. Morgan MOTRICITY INC.'S ANSWER TO CLASS Case No. 09-CV-01316 MHP ACTION COMPLAINT